

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VIRPUR GRAM PANCHAYAT

Versus

LABHUBEN AMBALAL RAIYANI

Appearance:

MR DG SHUKLA for SI NANAVATI for Petitioner

SERVED for Respondent No. 1

MR UM TRIVEDI, AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 15/10/97

ORAL JUDGEMENT

1. This petition under Article 226 and 227 challenging the order made by the competent authority under the Payment of Gratuity Act, 1972 as affirmed by the appellate authority under the said Act directing the petitioner Virpur Gram Panchayat, Virpur to pay payable amount of gratuity of Rs.12,447.40ps to respondent No.1

who is heir and legal representative of the employee of the petitioner Gram Panchayat, since deceased, by holding that provisions of Payment of Gratuity Act are applicable to Grampanchayat.

2. One Shri A.V. Raiyani, who is working was Peon in the Institute of MCH Centre run under Virpur Grampanchayat, Virpur since 2.5.1958 died on 10.6.1982, and his wife Smt. Labhuben Amball Raiyani, respondent No.1 applied for payment of gratuity to her as heir of deceased employee before the controlling authority under the Payment of Gratuity Act, 1971, Rajkot. In the first instance, Virpur Grampanchayat did not respondent to the notice, and an ex-parte order was made directing the Gram Panchayat to pay Rs.12447.40ps to the applicant by way of gratuity payable in case of deceased employee, by its order dated 15.11.1983. On appeal, the appellate authority remanded the case back to the controlling authority. After rehearing the parties, the earlier order was reaffirmed by order dated 6.2.1985. On further appeal, the appellate authority vide its order dated 25.6.1985 affirmed the order of the Controlling Officer as to computation. It may be noted that in order dated 15.11.1983 which ultimately was confirmed by the controlling authority, it was held that Payment of Gratuity Act is applicable to the institution because the workers are working in the said Institute number more than ten.

3. This petition raises the question whether grampanchayat constituted under the Panchayat Acts of the State are governed by the Payment of Gratuity Act. When the matter was called out no one appeared for respondent No.1 in spite of service.

4. Heard learned counsel for the petitioner and learned Assistant Government Pleader.

5. For considering the question whether a Grampanchayat can be said to be governed by the provisions of Payment of Gratuity Act, it would be apposite to notice relevant provisions of the Act of 1972.

6. Section 1 which sets amputant scope of its applicability in its relevant extract reads as under:

- "1(3). It shall apply to -
 - (a) every factory, mine oilfield, plantation, port and railway company;
 - (b) every shop or establishment within the

meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

(3-A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten."

On the premises of this provision, it was urged that the petitioner being a local authority constituted under Gujarat Panchayats Act is not establishment within the meaning of the Bombay Establishments and Shops Act, 1948 as is applicable in the State of Gujarat. This controversy is now beyond debate that under sub-clause (b) subsection (3) of Section 1, the law relating to Establishments and Shops in a State is not confined to concerned Shops and Establishments Act of the State. It in the first instance refers to law being in force in a State and does not refer to law enacted by State Legislation. Therefore a law whether enacted by the Parliament or State Legislature, if it operates within the State to govern Shops and Establishments in the State, the provisions of Payment of Gratuity Act, 1972 would be attracted subject to other provisions of the Act. So also the Shops and Establishments having been used to denote application of law in the State to both shops and establishments but it may either be applicable to shops or to establishment whether commercial or non commercial or to both. The question directly arose before the Supreme Court in the case of State of Punjab v. Labour Court, Jullunder and others reported in 1980(1) SCC 4.

In a case arising from retrenchment of a person employed in a construction project of Hydel Department of Government of Punjab, claim was lodged for gratuity, bonus and other allowances and benefits, before the Labour Court under Section 33C(2) of the Industrial Disputes Act for computation of such benefits. Labour

Court held that the workmen were entitled to gratuity but not to other benefits. On a challenge to the order by the State Government after being unsuccessful before the High Court, the two contentions were raised in support of its plea that project did not fall within the scope of Section 1(3)(b) of the Payment of Gratuity Act; firstly because law for the time being in force in a State in Section 1(3)(b) of the Act does not include a central enactment like the Payment of Wages Act and secondly that law in Section 1(3)(b) of the Act refers to a law both to establishment and shops and the Payment of Gratuity Act is a law in relation to and the Payment of Wages Act is a law in relation to establishment alone. The contentions were negatived by the Supreme Court. To the first question, the court said:

"Section 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State". There can be no dispute that the Payment of Wages Act is in force in the State of Punjab. Then, it is submitted, the Payment of Wages Act is not a law in relation to "shops and establishments". As to that, the Payment of Wages Act is a statute which, while it may not relate to shops, relates to a class of establishments, that is to say, industrial establishments."

The court further went on to add negativing the second limb of the argument:

"The expression is comprehensive in its scope, and can mean a law in relation to shops as well as, separately, a law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to noncommercial establishments. Had the intention of Parliament been, when enacting Section 1(3)(b), to refer to a law relating to commercial establishments, it would not have left the expression "establishments" unqualified. Section 1(3)(b) applied to every establishment within the meaning of any law for the time being in force in relation to establishments in a State."

In the case before the Supreme Court reliance was placed on the applicability of Payment of Wages Act in the State of Punjab and the court found within the meaning of Payment of Wages Act that it was governed by the Hydel Upper Bari Doab Construction Project was such

an establishment governed by the Payment of Wages Act and therefore the Payment of Gratuity Act also applies to it.

7. Therefore, the contention of the learned counsel for the petitioner that simply because Panchayat being a local authority is not a commercial establishment which alone is governed under the provisions of Bombay Shops and Establishments Act, 1948 is covered by Payment of Gratuity Act under Section 1(3)(b) cannot be sustained. The applicability of Section 1(3)(b) cannot be confined to any establishment governed by State legislation in relation to shops and commercial establishments, but refers to any 'establishment or shop' governed by any law, operative within the State.

8. It was also further urged that notwithstanding that even if Panchayat can be considered to be an establishment within the meaning of Section 1(3)(b) governed by any law which is in force in the State, the definition of employee under Section 2(e) excludes civil servants holding a post under the State from the applicability of the Gratuity Act. He placed relevance on State of Gujarat and Another v. Raman Lal Keshav Lal Soni and others reported in AIR 1984 SC 161 that employees of the Gram Panchayat in the State of Gujarat are civil servants holding post under the State. However, on a close reading of subsection (e) of Section 2, I am of the opinion that the status of employee being an employee holding a post under the State by itself does not absolve the Government or Local Authority from operation of the Payment of Gratuity Act. Subsection (e) of Section 2 reads as under:

2(e) "employee" means any person (other than an apprentice) employed on wages, not exceeding two thousand and five hundred rupees per mensem, or such higher amount as the Central Government may, having regards to the general level of wages, by notification specify, in any establishment, factory, mine, oilfield, plantation, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

9. The perusal of the aforesaid provision clearly informs that in order to secure its attraction, not only a person must hold a post either under Central Government or State Government, but in addition thereto it must further be shown that he is governed by any other Act or Rules for payment of gratuity, that is to say, that a person holding a civil post either under the Central Government or State Government is not considered employee within the meaning of Payment of Gratuity Act, to be excluded from the benefits of the said Act, it has further to be shown that in the matter of payment of gratuity he has otherwise been provided for under some enactment or rules. This is further supported from the fact that subsection (f) which define "employer" includes employees of the Government who are also governed under the provisions of Payment of Gratuity Act. Subsection (f) of Section reads as under:

"2(f)"employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop -

(i) belonging to, or under the control of the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;"

10. The aforesaid provision clearly envisages that where any person is employed in any department, or under local authority in any activity, which is an

establishment within the meaning of any law for the time being in force in relation to shops and/or establishments in the State, then merely his being a civil servant under the State does not exclude the applicability of Payment of Gratuity Act, but it is only on fulfillment of condition referred to in subsection (e) of Section 3 such an employee may be excluded from the purview of Payment of Gratuity Act, 1972 in view of the applicability of other gratuity provisions to him. Otherwise, a civil servant employed under any department or under any project, should it conform to the definition of establishment under any provision of law in force in the State whether enacted in State or Central Government, will be subject to the provisions of Payment of Gratuity Act.

11. The aforesaid principles being clear, the question remains to be decided whether in the present case, the Panchayat is governed by any other provisions relating to establishments commercial or noncommercial and if it is governed by such provision whether any other Act or Rules are in force providing for payment of gratuity to its employee.

12. So far as the first question whether gram Panchayat in respect of which there is any law in force for the time being in the State is concerned, need not detain me. It has been brought to my notice that a Division Bench of this Court in Special Civil Application No. 1445 of 1974 decided on 3.12.1974 has held that those sections of establishments of a local authority which carry on activities that have been held to be covered under the Industrial Disputes Act would ordinarily be covered within the ambit of expression 'commercial establishment' under Shops and Establishment Act and would be governed by the provisions of Payment of Gratuity Act. The decision was concerning a local authority constituted under the Municipalities Act. For the purpose of extending the applicability of shop and commercial establishment to gram panchayat which also is a local authority constituted under the Statute no other view can be taken. As the question presently stands governed by a Bench decision of this Court, it does not require further probe.

12. So far as the second question is concerned that in view of the definition of employee clause (e) of Section 2 the husband of respondent No.1 did not fall within the definition of 'employee' being a State servant also need not detain us. As discussed above, the fact that an employee concerned is holding a post under the

State does not affect his right to gratuity. The only question would be whether gratuity would be payable under the Payment of Gratuity Act or the relevant provisions of other Act or Rules governing payment of gratuity. In any case he shall be entitled to benefits of gratuity. Therefore, in view of Division Bench decision of this Court referred to above, the Gram Panchayat must be held to be a shop employing more than 10 persons governed under Section 1(3)(b) of the Payment of Gratuity Act and entitlement to gratuity under some provision of law being not in doubt, at this distance of time, I am not inclined to remand the matter back for the purpose of further enquiry or recomputation of gratuity amount payable to respondent No.1 which I am informed has already been deposited with controlling authority. It would be not in consonance with justice and equity to drive respondent No.1 any further from the benefit of gratuity which ordinarily should have reached him soon after it became due. Even if the case of the local authority is not governed by provisions of Shops and Commercial Establishments Act, still, it would be an establishment to which provisions of Industrial Disputes Act will be attracted and as it is an establishment governed by the provisions of Industrial Disputes Act, a law enacted by Central Government, the provisions of Gratuity Act, will be attracted.

As a result, this petition fails and is hereby dismissed. Rule discharged. There shall be no orders as to costs.